

REDACTED

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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 LANDMARK HEALTH, LLC,
13 Plaintiff,

14 v.

15 KUNAL SETHY, an individual and FIRST
MILE HEALTH, INC., a Delaware
16 Corporation,

17 Defendants.
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Case No.

**COMPLAINT FOR: (1) VIOLATION OF
THE DEFEND TRADE SECRETS ACT; (2)
VIOLATION OF THE CALIFORNIA
UNIFORM TRADE SECRET ACT; (3)
BREACH OF FIDUCIARY DUTY; (4)
BREACH OF CONTRACT; (5)
COMPUTER CRIMES IN VIOLATION OF
CALIFORNIA PENAL CODE 502(c); AND
(6) UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

NATURE OF THE CASE

1. This is an action based upon: (1) the Defend Trade Secrets Act, 18 U.S.C. § 1836, *et seq.*; (2) California’s Uniform Trade Secrets Act (Cal. Civ. Code § 3246, *et seq.*); (3) breach of fiduciary duty and duty of loyalty; (4) breach of contract; (5) violation of California Penal Code Section 502(c); and (6) unfair competition (under Cal. Bus. & Prof. Code § 17200, *et seq.*); and Landmark seeks injunctive relief, damages, and all other appropriate relief to stop Defendants’ use, disclosure, and misappropriation of Landmark’s confidential and trade secret documents and information by, among other things, taking such information from Landmark’s secured computer systems and using it to operate a competing business against Landmark.

THE PARTIES

2. Plaintiff Landmark Health, LLC (hereinafter “Landmark” or “Plaintiff”) is an LLC organized under the laws of Delaware, with is headquarters in Huntington Beach, California.

3. Defendant Kunal Sethy was and at all relevant times mentioned hereunder an individual residing in the County of San Mateo State of California. Until September 28, 2018, Defendant Sethy worked for Landmark through its subsidiary, Landmark MSO, LLC, out of its offices located in San Mateo, California. It is within the County of San Mateo where Landmark is informed and believes the majority of the wrongful conduct occurred.

4. Defendant First Mile Health, Inc. (“FMH”) is a Delaware Corporation, doing business in and around the County of San Mateo, and other parts of the Bay Area. FMH was incorporated on or about August 10, 2018.

5. Upon information and belief, the actions and omissions alleged herein to have been undertaken by the Defendants were undertaken by each Defendant individually, were actions and omissions that each Defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions and omissions each Defendant assisted, participated in, or otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided and abetted the actions of the Defendants set forth below, had knowledge of those actions and omissions, provided assistance and benefited from those actions and omissions. Each of the Defendants was the agent of each of the remaining Defendants, and in

1 doing the things herein alleged, was acting within the course and scope of such agency and with
2 the permission and consent of other Defendants.

3 6. Third party Slack Technologies, Inc. (“Slack”) is a technology company based in
4 the City of San Francisco that offers Internet-related services, including real time communication
5 and document sharing and storage through their “Slack” program. Slack has an agent for service
6 of process at Incorporating Services, LTD, located at Incorporating Services, LTD, 7801 Folsom
7 Boulevard, Suite 202, Sacramento, CA 95826. As described herein, Defendants transmitted and
8 stored Landmark’s confidential and trade secret documents and information to their personal
9 email and Slack accounts.

10 7. Third party Google, Inc. (“Google”) is a technology company based in Mountain
11 View, California, that offers Internet-related services, including email services through Gmail,
12 cloud storage, and real-time communication and document sharing through Google Hangouts.
13 Google has an agent for service of process at CSC-Lawyers Incorporating Service, 2710 Gateway
14 Oaks Dr., Suite 150N, Sacramento, CA 95833, and has offices at 1600 Amphitheatre Parkway,
15 Mountain View, California 94043. As described herein, Defendants transmitted and stored
16 Landmark’s confidential and trade secret documents and information to their personal email and
17 Google Hangout accounts.

18 **JURISDICTION**

19 8. This Court has original jurisdiction over this action pursuant to the Defend Trade
20 Secrets Act, 18 U.S.C. § 1836(c) and 28 U.S.C. § 1367.

21 **VENUE**

22 9. The conduct alleged herein occurred within the City and County of San Mateo,
23 State of California, and jurisdiction and venue is therefore proper within the Northern District of
24 California.

25 **INTRADISTRICT ASSIGNMENT**

26 10. This is an action for trade secret misappropriation, breach of contract, unfair
27 competition, breach of fiduciary duty and loyalty, where a substantial part of the events or
28 omissions which give rise to the claims have taken place in San Mateo County and where a

substantial part of the property that is the subject of the action is situated in San Mateo County. Thus, pursuant to Civil L.R. 3-2(c) and (e), this action should be assigned to the San Francisco Division.

LANDMARK AND ITS BUSINESS

11. Landmark is a healthcare services company with its headquarters in Huntington Beach, California. Landmark, however, has offices in other parts of the state, including an office in San Mateo County, where it employed Defendant Sethy. Landmark's mission is to assist health plans in the delivery and management of high-quality and cost-effective care for patients with complex health needs through home-based medical care. Landmark's community-based, physician-led medical teams specialize in house calls and deliver medical, behavioral, social and palliative care to individuals with multiple chronic conditions wherever they reside, and whenever they need it. Landmark helps provide an efficient delivery of superior clinical outcomes through the dissemination and adoption of evidence-based medicine. To achieve these goals, Landmark contracts with affiliated medical groups in fourteen markets across the United States. Landmark has been extremely successful in achieving these goals, and is responsible for caring for over eighty thousand members across the country.

12. Landmark creates economic and clinical value by [REDACTED]
[REDACTED]
[REDACTED] In each health plan agreement, Landmark and its health plan partner establish a [REDACTED]

[REDACTED] In each subsequent year, Landmark [REDACTED]

[REDACTED] and Landmark has the potential to [REDACTED]

[REDACTED] In short, Landmark's entire business model is based on its [REDACTED]
[REDACTED]
[REDACTED].

1 13. Landmark's customers include [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 **LANDMARK'S PROPRIETARY AND TRADE SECRET INFORMATION**

9 14. Landmark was founded after a year of [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] Since that initial contract, Landmark has grown considerably, and now manages over

14 [REDACTED]

15 [REDACTED]

16 15. Since its founding in 2013, Landmark has continued to develop an extensive

17 amount of intellectual property, including proprietary and trade secret data. This proprietary and

18 trade secret information consists of, but is not limited to [REDACTED]

19 [REDACTED]

20 [REDACTED] This

21 proprietary and trade secret information is kept by Landmark in various secured databases. For

22 example, Landmark uses [REDACTED]

23 [REDACTED], including email communications containing sensitive information and

24 attachments, as well as customer/potential customer contact information. Because of its value,

25 Landmark takes extraordinary steps to protect its confidential and trade secret documents and

26 information. In this regard, Landmark limits access to sensitive confidential information and

27 trade secrets. It does so by requiring its employees, such as Defendant Sethy, to sign proprietary

28 information agreements in which they promise to keep Landmark information confidential. For

example, as a condition of employment, Landmark requires employees to sign the Landmark Non-Disclosure, Non-Solicitation and Developments Agreement (“NDA”). Section 1 of the NDA provides:

I shall not at any time, whether during or after the termination of my employment: (a) reveal to any Person any Confidential Information (as defined in Schedule 1 hereto), except to employees of the Company who need to know such Confidential Information for the purposes of their employment, or as otherwise authorized by the Company in writing; (b) keep, use or attempt to use any Confidential Information except as may be required in the ordinary course of performing my duties as an employee of the Company; or (c) use any Confidential Information for my own benefit or the benefit of others or in any manner that may injure or cause loss or may be calculated to injure or cause loss to any Company Affiliate, whether directly or indirectly.

Section 2 similarly provides:

Furthermore, I agree that during my employment I shall not make, use or permit to be used any Company Documentation (as defined in Schedule 1 hereto), other than for the benefit of the Company. I further agree that I shall not, after the termination of my employment, use or permit others to use any such Company Documentation, it being agreed that all Company Documentation shall be and remain the sole and exclusive property of the Company. Immediately upon the termination of my employment I shall deliver all Company Documentation, and all copies thereof, as well as any other tangible property of the Company, including any computer, cell phone or access badge, in my possession to the Company, at its main office.

16. The NDA also contains provisions prohibiting the disclosure or use of confidential information received from third parties (Section 9) and prohibits an employee from soliciting any Landmark employees or former employees for a period of two years (Section 10).

17. Defendant Sethy executed the NDA on February 3, 2017, prior to starting his employment with Landmark. (Exhibit 1 [Kunal Sethy Employment Letter and NDA].)

18. Landmark also maintains robust computer and internet use policies, which likewise prohibit employees from accessing or transferring confidential information for purposes that would run counter to Landmark’s best interests. For example, Landmark’s Acceptable Use of Information Assets Policy (“Use Policy”) provides:

1 Computer systems, including but not limited to computer hardware,
2 software, operating systems, cell phones, mobile wi-fi devices
3 (MiFi), storage media, electronic mail and files are the property of
4 the Company. These systems are to be used for business purposes
5 in serving the interest of the Company, customers, business
6 partners, and our members. The responsible use of computer
7 systems and other-devices is necessary to prevent loss of physical
8 or information assets. Specific procedures are outlined below to
9 ensure the protection of these assets.

10 The Use Policy further provides that Landmark's systems are subject to Audit and
11 monitoring (Section 1.6), that systems may not be accessed for unauthorized purposes (Section
12 2.1), that passwords may not be shared (Section 2.2), that non-employees may not access
13 Landmark computers (Section 2.4), and that employees are prohibited from using Landmark
14 computers for private business activities (Section 4.8). (Exhibit 2, [Use Policy].)

15 19. Landmark also maintains an Email & Messaging Policy ("Email Policy") which
16 applies to all Landmark employees. The Email Policy requires that all Landmark email accounts
17 be used for company business-related purposes (Section 1.2), and prohibits the use of non-
18 company email accounts for work purposes (Section 2.1). (Exhibit 3, [Email Policy].)

19 20. Indeed, because Landmark also [REDACTED], it takes great
20 care to ensure the integrity of its systems and security protocols. Landmark employees are only
21 able to gain access to Landmark's information through password-protected programs and entry
22 points. Landmark secures access to its facilities and employs other security measures that limit
23 and control access to its confidential information and trade secrets. Landmark takes security
24 measures to protect its facilities, including locking its doors, activating an alarm system (or being
25 in a building that activates an alarm system) after business hours, and/or utilizing security guards
26 to ensure no unauthorized access to its facilities. The facilities are closed to the public during
27 normal business hours. Employees must supply proper credentials to access Landmark facilities,
28 computers and devices. Landmark employs controls on its computers that prohibit the use of
external devices, such as USB drives or "thumb drives" to transfer information off of its systems.

21. Landmark continuously updates these policies, and maintains the digital and physical security and confidentiality of its information. Landmark employs computer security personnel to monitor its systems and information.

22. Landmark derives value from the secret nature of its confidential and trade secret documents and information. In particular, Landmark's confidential and trade secret strategies, cost and logistical models, contacts, and market analysis go the very core of its business, and are critical to its ability to compete in the marketplace. The use of these trade secrets by a competitor would inflict irreparable harm on Landmark.

DEFENDANT SETHY'S DUTIES TO LANDMARK

23. Landmark hired Defendant Sethy in February 2017 as a VP, General Manager for the San Mateo, California market. As part of his job duties, Defendant Sethy worked closely with Landmark's customers in Northern California, including [REDACTED]. Defendant Sethy was issued and used a company laptop, a company email address, and had access to Landmark's trade secret documents and information, including, but not limited to, [REDACTED]

[REDACTED] In particular, Defendant Sethy, in the course of performing his job duties, received confidential and trade secret documents regarding opportunities in Northern California and Landmark's existing customers in Northern California.

24. As a condition of his employment, Defendant Sethy executed an NDA on February 3, 2017, in which, as addressed above, he promised not to use or disclose Landmark's confidential information. As an employee of Landmark's, Defendant Sethy was also subject to Landmark's Use Policy and Email Policy, which contained additional prohibitions against misuse of Landmark's computer and email systems and the disclosure or misuse of Landmark's confidential information. As an employee of Landmark, Defendant Sethy owed an undivided duty of loyalty to Landmark.

DEFENDANTS' MISCONDUCT

25. Unbeknownst to Landmark, from at least July 2018, and while still a Landmark employee, Defendant Sethy began competing against Landmark and misappropriating

1 Landmark's confidential and trade secret information. He did this primarily by using Landmark's
 2 own computer systems, including the Landmark laptop he had been issued and his Landmark
 3 email address. He did so even though these things were being done without the permission of
 4 Landmark.

5 26. As early as July 2, 2018, Defendant Sethy used his Landmark-issued laptop to
 6 communicate via email with prospective clients, staff, and investors about his new company,
 7 FMH. For example, on August 21, 2018, Defendant Sethy sent an email to [REDACTED]

8 [REDACTED] In the email, Defendant Sethy explains that he has been [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 27. Between July 2, 2018 and late-September, 2018, Defendant Sethy repeatedly used
 12 his Landmark-issued laptop while not connected to Landmark's IT systems and network, and
 13 during such times used his personal Gmail and his FMH email for appointment scheduling, web
 14 chat (via Google Hangouts), and Slack collaboration and/or file sharing. Because he was not
 15 connected to Landmark's systems at these times, he was able to evade Landmark's use
 16 restrictions and security monitoring.

17 28. On September 10, 2018, Defendant Sethy used his Landmark-issued laptop to set
 18 up a business account on Gmail and a related Slack account. "Slack" is a third-party real-time
 19 communication and document sharing service which Landmark is informed and believes was
 20 developed and/or owned by Slack Technologies, Inc. Both accounts were registered as belonging
 21 to FMH, and Defendant Sethy identified himself as the "CEO" and service administrator.

22 29. As set forth further below, Defendant Sethy forwarded Landmark confidential and
 23 proprietary documents to himself from his Landmark email to his personal Gmail account
 24 (kunal.sethy@gmail.com) as well as to his FMH email address (kunal@firstmilehealth.org)

25 30. Throughout early September 2018, Defendant Sethy downloaded bulk information
 26 from the Landmark file server and information system. These documents included highly
 27 confidential and proprietary Landmark documents, including but not limited to, [REDACTED]
 28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]. There was no legitimate business reason for Defendant Sethy to do this, and in
4 conjunction with Defendant Sethy's use of Slack, Google Hangouts, and Gmail, allowed
5 Defendant Sethy to transfer all of this information to his personal possession. The overwhelming
6 bulk of these downloads occurred on the last two days of Defendant Sethy's employment with
7 Landmark, and coincided with use of Slack and Gmail, strongly indicating that the documents
8 were subsequently transferred off of the Landmark laptop and to systems controlled by
9 Defendants.

10 31. On September 20, 2018, Defendant Sethy forwarded an email from [REDACTED]
11 [REDACTED] originally sent to his Landmark email address to his FMH email. He then responded to
12 the invitation by offering to meet the week of October 8, 2018 (after his scheduled departure from
13 Landmark). The email inquired about work Defendant Sethy was doing on Landmark's behalf
14 [REDACTED]. Then, just two days later, Defendant Sethy forwarded an email from his Landmark
15 email to his FMH email titled "Notes & Action items from [REDACTED] 09_18_18." The email
16 contained proprietary analysis and customer information about Landmark's relationship with
17 [REDACTED] which would be invaluable to a competitor.

18 32. On September 27, 2018, Defendant Sethy forwarded an email titled [REDACTED]
19 [REDACTED] along with an attachment titled [REDACTED] to his
20 personal Gmail account from his Landmark account. The attachment contained highly
21 proprietary [REDACTED]. Less than thirty minutes later,
22 Defendant Sethy corresponded with [REDACTED], and asked her to send a message to
23 his personal Gmail account regarding a requested meeting set for the week of October 8, 2018
24 with [REDACTED]. On September 28, 2018, Defendant Sethy again reached out to [REDACTED] and
25 solicited them for his new business.

26 33. Also on September 28, 2018, Defendant Sethy forwarded to his personal Gmail
27 account a series of emails which included the attachment
28 "[REDACTED] The email was

1 originally dated August 13, 2018, and Defendant Sethy had no legitimate business reason to
2 forward this attachment. The attachment contains highly confidential [REDACTED]
3 [REDACTED] which would be useful to a
4 competitor attempting to establish a similar relationship.

5 34. Defendant Sethy also attempted to use a USB storage device on September 28,
6 2018, in an apparent attempt to transfer information of his Landmark-issued laptop, but was
7 prevented from doing so by Landmark's security protocols which prevent the transfer of
8 information to USB devices.

9 35. On September 28, 2018, Defendant Sethy resigned from Landmark. Shortly
10 thereafter, he officially announced his new business, FMH, although he had been working for the
11 business secretly since at least June 2018 and FMH was incorporated on August 10, 2018, well
12 over a month before Defendant Sethy would resign from Landmark.

13 36. After establishing his new business, Defendant Sethy became even more brazen
14 about using Landmark's information and soliciting Landmark's employees.

15 37. Shortly after leaving Landmark, Defendant Sethy hosted a private dinner for
16 Landmark's entire San Mateo market team, *except* for managers. On information and belief,
17 Sethy used this meeting to solicit these Landmark employees to work for his new business.

18 38. On October 6, 2018, Defendant Sethy sent a PowerPoint presentation to a former
19 Landmark executive, titled "First Mile Health Investor Slide Deck [REDACTED]" This was part of an
20 effort to solicit the executive to invest in First Mile Health and to request that the executive send
21 him contact information for additional Landmark customers. As set forth above, the Investor
22 Slide Deck was full of Landmark information taken from a Landmark PowerPoint presentation
23 that Defendant Sethy had improperly forwarded to his personal email account. For example, a
24 side-by-side comparison of a graph appearing in the Landmark deck and a graph appearing in the
25 FMH deck shows that the FMH graph is identical to the Landmark graph:

26 ///

27 ///

28 ///

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 39. Notably, the slide deck claims that FMH has completed a six-month pilot program,
13 which allegedly showed that FMH had significant benefits for its users. In other words, FMH had
14 either been in operation since on or about April 2018, meaning that Defendant Sethy was directly
15 competing against Landmark while still a Landmark employee for months (and while hiding this
16 from Landmark), or Defendants had no actual pilot program and were instead using Landmark's
17 information to fake having performed such a program.

18 40. These actions show that Defendant Sethy engaged in a persistent campaign to
19 misappropriate Landmark's confidential information and trade secrets, and to use his position as a
20 Landmark employee to undermine Landmark and steal its customers out from under it. Further,
21 they show that FMH has been making use of the information Defendant Sethy took from
22 Landmark to compete against Landmark, all while Defendant Sethy continues to breach his
23 contractual obligations to Landmark by soliciting its employees and using its confidential
24 information.

25 41. These actions have not only inflicted harm on Landmark, but threaten to inflict
26 additional and irreparable harm against Landmark. The risk of harm results directly from
27 Defendants' misconduct. FMH is able to unfairly compete and undermine Landmark with its
28 customers by using the confidential information taken by Defendant Sethy (doing much of this

1 while he was still employed and being paid a salary by Landmark). FMH would not be able to
 2 compete at all without using Landmark's information. Defendants also continue to disrupt
 3 Landmark by soliciting their employees.

4 42. Moreover, the majority of the bad acts as set forth herein were done by Defendant
 5 Sethy while he was still being paid to work for and further the bests interests of Landmark, yet
 6 each of the actions were done by Defendant Sethy completely outside the scope of his
 7 employment at Landmark. Indeed, these things were done to further Defendant Sethy's personal
 8 interests and the interests of Defendant FMH, and in complete disregard to the fact that this
 9 course of conduct undermined the best interests of Landmark.

10 43. Upon information and belief, Defendants have received material benefits from
 11 their misappropriation of Landmark's confidential and trade secret documents and information.

12 **CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 Trade Secret Misappropriation Under the Defend Trade Secrets Act

15 Against All Defendants

16 (18 U.S.C. § 1836 *et seq.*)

17 44. Landmark realleges and incorporates by reference each and every allegation set
 18 forth in paragraphs 1-43 above.

19 45. Landmark owns and possesses certain confidential and trade secret documents and
 20 information as alleged above.

21 46. Landmark's confidential and trade secret information relates to services offered
 22 and sold in interstate or foreign commerce.

23 47. Landmark's confidential and trade secret information is highly valuable and
 24 Landmark will suffer irreparable harm from the use and disclosure of its information.

25 48. Landmark has taken reasonable steps to protect the secrecy of its confidential and
 26 trade secret documents and information, including by having employees sign an NDA and by
 27 instituting and enforcing the Use Policy and the Email Policy.
 28

49. Defendants have misappropriated Landmark's confidential information in the improper and unlawful manner described herein, including by transferring Landmark's information off of its secured systems and to Defendants' personal computers and by using that information to compete against Landmark.

50. Defendant Sethy failed to return Landmark's information at the end of his employment with Landmark, in violation of his NDA with Landmark.

51. On information and belief, Defendants will continue to misappropriate, disclose, and use for their benefit and Landmark's detriment Landmark's confidential information, unless they are enjoined from doing so.

52. Because Landmark's remedy at law is inadequate, Landmark seeks – in addition to damages --- a temporary injunction and a permanent injunction to protect Landmark's confidential and trade secret information and Landmark's legitimate business interests. Landmark will continue to suffer irreparable harm absent injunctive relief.

53. Defendants' misappropriation of Landmark's confidential and trade secret information has caused and will continue to cause Landmark substantial injury, including but not limited to actual damages, lost profits, harm to its reputation, and the diminution in value of its trade secrets. Defendants have been unjustly enriched by their misappropriation of Defendants' confidential information and trade secrets.

54. Defendants' misappropriation of Landmark's confidential information was intentional, knowing, willful, malicious, fraudulent, and oppressive.

SECOND CLAIM FOR RELIEF

Trade Secret Misappropriation Under California's Uniform Trade Secret Act

Against All Defendants

(Cal. Civ. Code § 3426 *et seq.*)

55. Landmark realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 54 above.

56. Landmark owns and possesses certain confidential and trade secret documents and information as alleged above.

1 57. Landmark's confidential and trade secret information relates to services offered
2 and sold in interstate or foreign commerce.

3 58. Landmark's confidential and trade secret information is highly valuable and
4 Landmark will suffer irreparable harm from the

5 59. Landmark has taken reasonable steps to protect the secrecy of its confidential and
6 trade secret documents and information, including by having employees sign an NDA and by
7 instituting and enforcing the Use Policy and the Email Policy.

8 60. Defendants have misappropriated Landmark's confidential information in the
9 improper and unlawful manner described herein, including by transferring Landmark's
10 information off of its secured systems and to Defendants' personal computers and by using that
11 information to compete against Landmark.

12 61. Defendant Sethy failed to return Landmark's information at the end of his
13 employment with Landmark, in violation of his NDA with Landmark.

14 62. On information and belief, Defendants will continue to misappropriate, disclose,
15 and use for their benefit and Landmark's detriment Landmark's confidential information, unless
16 they are enjoined from doing so.

17 63. Because Landmark's remedy at law is inadequate, Landmark seeks – in addition to
18 damages --- a temporary injunction and a permanent injunction to protect Landmark's
19 confidential and trade secret information and Landmark's legitimate business interests.
20 Landmark will continue to suffer irreparable harm absent injunctive relief.

21 64. Defendants' misappropriation of Landmark's confidential and trade secret
22 information has caused and will continue to cause Landmark substantial injury, including but not
23 limited to actual damages, lost profits, harm to its reputation, and the diminution in value of its
24 trade secrets. Defendants have been unjustly enriched by their misappropriation of Defendants'
25 confidential information and trade secrets.

26 65. Defendants' misappropriation of Landmark's confidential information was
27 intentional, knowing, willful, malicious, fraudulent, and oppressive, within the meaning of
28 California Civil Code, Section 3294. Defendants misappropriated Landmark's confidential and

1 trade secret information intentionally and knowingly and with a deliberate intent to benefit
 2 themselves and to injure Landmark. Landmark is entitled to its damages, in an amount to be
 3 determined at trial, as well as injunctive relief, and an award of punitive and/or treble damages
 4 and attorney's fees pursuant to California Civil Code, Sections 3426.3(c) and 3426.4.

5 **THIRD CLAIM FOR RELIEF**

6 Breach of Fiduciary Duty and Duty of Loyalty

7 Against Defendant Sethy

8 66. Landmark realleges and incorporates by reference each and every allegation set
 9 forth in paragraphs 1-65 above.

10 67. As an employee of Landmark, Defendant Sethy owed Landmark a duty of loyalty
 11 and was obligated to act with the utmost good faith, and in the best interest of Landmark.

12 68. Landmark was entitled to place its trust and confidence in Defendant Sethy and
 13 was entitled to expect Defendants to act with the utmost good faith toward it in carrying out the
 14 employment and the business of Landmark.

15 69. Landmark relied on Defendant Sethy's loyalty and integrity and faithful
 16 performance of his job duties and responsibilities.

17 70. Defendant took advantage of Landmark's faith in him—thereby breaching his
 18 fiduciary duties – by failing to perform his duties to Landmark, by acting in conflict of interest,
 19 by engaging in activities for his own benefit and to the detriment of Landmark, and by taking
 20 Landmark's confidential and trade secret information and using it to operate a competing business
 21 against Landmark.

22 71. Defendant Sethy knowingly and willingly breached his duty of loyalty to
 23 Landmark by misappropriating Landmark's confidential and trade secret documents and
 24 information, and engaging in acts that undermine Landmark and its relationships with its
 25 customers.

26 72. Defendant Sethy acted in a manner inconsistent with his agency and trust by
 27 misappropriating Landmark's confidential and trade secret documents and information to the
 28

1 injury of Landmark and for his own benefit and the benefit of Defendants, and by acting against
2 Landmark's interests while and after being employed by Landmark.

3 73. As a direct and proximate result of Defendant Sethy's disloyalty to Landmark and
4 breach of his duties, Landmark has been and is being harmed, and faces irreparable injury.

5 74. Landmark is entitled to damages, in an amount to be determined at trial, as well as
6 disgorgement by Defendant Sethy of all profits he received as a result of his disloyalty, in an
7 amount to be determined at trial. Landmark is further entitled to injunctive relief against
8 Defendant Sethy and those acting in concert with him, to remedy his past improper conduct and
9 prevent such conduct in the future, including the seizure and return of all of Landmark's
10 information and the destruction of materials created by Defendants by using Landmark's
11 information.

12 75. The above-recited actions of Defendants were done with malice, fraud, oppression,
13 and reckless disregard of the above described rights of Landmark and within the meaning of
14 California Civil Code § 3294. Therefore, Landmark is entitled to recover punitive damages
15 against Defendants.

16 **FOURTH CAUSE OF ACTION**

17 Breach of Contract

18 Against Defendant Sethy

19 76. Landmark realleges and incorporates by reference each and every allegation set
20 forth in paragraphs 1-75 above.

21 77. As a condition of his employment with Landmark, on February 3, 2017, Defendant
22 Sethy signed an NDA with Landmark (Exhibit 1.)

23 78. Defendant Sethy breached Section 1 of the NDA by taking, disclosing, and using
24 Landmark's confidential information.

25 79. Defendant Sethy breached Section 2 of the NDA by retaining Landmark's
26 confidential information after his employment with Landmark ended, and by continuing to use
27 that information in his competing business.

28

1 a computer, computer system, or computer network;

- 2 • Knowingly and without permission uses or causes to be used computer services;
- 3 • Knowingly accesses and without permission adds, alters, damages, deletes, or
- 4 destroys any data, computer software, or computer programs which reside or exist
- 5 internal or external to a computer, computer system, or computer network;
- 6 • Knowingly and without permission provides or assists in providing a means of
- 7 accessing a computer, computer system, or computer network in violation of this
- 8 section;
- 9 • Knowingly and without permission accesses or causes to be accessed any
- 10 computer, computer system, or computer network; or
- 11 • Knowingly introduces any computer contaminant into any computer, computer
- 12 system, or computer network.

13 85. None of Defendant Sethy's actions fall within the so-called scope of employment
 14 exception, which is set forth in Section 502(c)(h). Indeed, here, Defendant Sethy were acting
 15 solely for his and the benefit of FMH, his new employer, and against the best interests of
 16 Landmark, when he violated 502(c). Specifically, these Defendants systematically engaged in
 17 copying, downloading, and then transmitting data to their personal accounts in order to run their
 18 competing business, and were against the best interests of Landmark.

19 86. As a consequence, Defendants have been unjustly enriched, Landmark has been
 20 harmed and Landmark has sustained damages in an amount to be proven at trial. On information
 21 and belief, Defendants' acts and conduct that constitute the commission of these computer crimes
 22 were carried out willfully, fraudulently, maliciously and with a wanton disregard of Landmark's
 23 rights, thereby entitling Landmark to punitive damages to be proven at trial.

24 87. Landmark also has suffered irreparable harm as a result of Defendants' activities
 25 and will continue to suffer irreparable injury that cannot be adequately remedied at law unless
 26 Defendants, and their officers, agents and employees, and all other persons acting in concert with
 27 them, are enjoined from engaging in any further such acts.

28

SIXTH CLAIM FOR RELIEF

Unfair Competition Cal. Bus. & Prof. Code §§ 17200, *et seq.*

Against All Defendants

88. Landmark realleges and incorporates by reference each and every allegation set forth in paragraphs 1-87 above.

89. By violating their contractual obligations and violating Section 502(c) of the California Penal Code, Defendants have competed unfairly. Through their actions, as detailed in this Complaint, Defendants have compromised the confidentiality of Landmark's trade secrets, undermined Landmark's competitive advantage in the market place, and has caused Landmark to incur costs and damages. Defendants have likewise compromised Landmark's opportunity to benefit from its ingenuity and efforts as embodied in its confidential and trade secret documents and information.

90. As a direct and proximate result of Defendants' unfair competition in violation of Business and Professions Code, Sections 17200 *et seq.*, Landmark has suffered and will continue to suffer great and irreparable harm, in an amount to be proved at trial. Defendants are likely to commit further violations of Business and Professions Code, Sections 17200 *et seq.*, and unless restrained and enjoined, will do so, all to Landmark's irreparable damage. Landmark's remedy at law is not sufficient to adequately compensate Landmark for the harm Defendants have inflicted and threatened. Accordingly, Landmark seeks preliminary and permanent injunctive relief pursuant to, *inter alia*, Business and Professions Code, Section 17203.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Landmark prays for judgment in its favor and against Defendants, as follows:

1. For compensatory damages, according to proof;
2. For exemplary and punitive damages, including damages and/or a reasonable royalty awardable under the UTSA Section 3426.3, according to proof;
3. For injunctive relief;
4. For restitution and/or disgorgement of profits;

DATED: November 14, 2018 CROWELL & MORING LLP

By: /s/ Mark A. Romeo
Mark A. Romeo

Attorneys for Plaintiff
Landmark Health, LLC

DEMAND FOR JURY

Plaintiff Landmark Health, LLC hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: November 14, 2018

CROWELL & MORING LLP

By: /s/ Mark A. Romeo
Mark A. Romeo

Attorneys for Plaintiff
Landmark Health, LLC